

State of California
BOARD OF EQUALIZATION

SALES AND USE TAX REGULATIONS

Regulation 1671. TRADING STAMPS AND RELATED PROMOTIONAL PLANS.

Reference: Sections 6006, 6011, 6012, Revenue and Taxation Code.

(a) INTRODUCTION. A variety of sales promotion plans involving premiums are in use by retailers. Common to these plans are some indicia furnished by the retailer to his customer based on the amount of purchases. Examples of such indicia are trading stamps, coupons, tickets and cash register tapes. Given quantities of indicia are surrendered by the customer in exchange for the premium.

(b) DESCRIPTION OF PLANS. For the purposes of this regulation, these plans may be divided into three types, as follows:

(1) At or near the time of making the sale the retailer incurs expense with relation to the premium by paying a third party, which third party assumes the obligation to furnish the premium to the retailer's customer. The retailer's payment to the third party is not dependent on his customers' subsequently surrendering the indicia in exchange for the premium.

(2) The retailer incurs no expense with relation to the premium until such time as the customer obtains the premium. The retailer purchases the premium and delivers it to his customer in exchange for the required quantity of indicia.

(3) The retailer incurs no expense with relation to the premium until about the time the customer obtains the premium. A third party delivers the premium to the customer in exchange for the required quantity of indicia. The retailer pays the third party on an agreed basis related to premium merchandise delivered to the customer by the third party.

The typical trading stamp plan falls under (1) above. The typical cash register tape plan falls under (2) or (3) above.

(c) CASH DISCOUNTS GENERALLY. Cash discounts allowed and taken on taxable retail sales may be excluded from the measure of the tax. The promotion plans described above constitute cash discounts. The cash discount is allowed by the retailer and taken by the customer at the time the retailer incurs the expense with relation to the premium.

(d) PLAN DESCRIBED IN (b) (1).

(1) CASH DISCOUNT. The retailer is entitled to a cash discount deduction at the time he pays the third party who undertakes to redeem the indicia used in the plan. The amount of the cash discount shall be computed on the basis of the amount the retailer pays to the third party for the indicia. See Paragraph (g) below for proration of cash discount where retailer's sales are not all taxable.

(2) SALES OF PREMIUM. The delivery of premium merchandise in exchange for a prescribed number of units of indicia used in this type of plan constitutes a taxable retail sale of the premium merchandise by the person delivering the merchandise (assuming that the premium merchandise is of a kind the retail sale of which is subject to tax). The selling price is the average amount paid to the third party by its customers for the indicia surrendered in exchange for the premiums.

(e) PLAN DESCRIBED IN (b) (2).

(1) CASH DISCOUNT. The retailer incurs the expense with relation to the premium at the time he delivers the premium to his customer. The retailer is entitled to a cash discount deduction at the time he delivers the premium to his customer. The amount of the cash discount deduction shall be the selling price of the premium as determined by Paragraph (f) (2) below. Since the cash discount relates to the previous sales on which indicia of some kind were issued to customers and which indicia are surrendered in exchange for the premium, the retailer is not entitled to the full cash discount deduction unless the previous sales on which indicia were issued were all taxable retail sales. Where some, but less than all, of such previous sales were taxable retail sales the retailer shall be allowed a portion of the cash discount as a deduction. See Paragraph (g) below.

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(2) SALE OF PREMIUM. The delivery of premium merchandise by the retailer to his customer in exchange for a prescribed number of units of indicia constitutes a taxable retail sale of the premium merchandise (assuming that the premium merchandise is of a kind the retail sale of which is subject to tax). The selling price is the sales price to the retailer of the premium merchandise.

(f) PLAN DESCRIBED IN (b) (3).

(1) CASH DISCOUNT. If a third party delivers the premium to the customer and the retailer pays such third party on an agreed basis related to premium merchandise delivered to the customer by the third party, the retailer is entitled to a cash discount deduction for the reporting period in which he pays the third party. The amount of the cash discount is the amount of the payment to the third party.

If the retailer's sales are not all taxable retail sales, there must be a proration of the cash discount. See Paragraph (g) below.

(2) SALE OF PREMIUM. The delivery of premium merchandise by a third party to a retailer's customer in exchange for a prescribed number of units of indicia is a taxable retail sale (assuming the premium merchandise is of a kind the retail sale of which is subject to tax). The selling price is the amount received by the third party.

(g) PRORATION OF CASH DISCOUNT BETWEEN TAXABLE AND EXEMPT TRANSACTIONS. If the retailer makes taxable sales and also engages in exempt transactions (for example, sales of food or services such as dry cleaning), and issues indicia on both taxable and exempt transactions, the cash discount must be prorated between taxable and exempt transactions and the cash discount deduction on his sales tax return may be taken only for cash discounts on taxable sales. In making tax returns, the retailer may use the following formula to determine the proration of cash discounts to taxable sales:

Taxable sales of the current reporting period on which indicia are issued divided by
all transactions of the current reporting period on which indicia are issued.

If upon audit this formula is shown to produce an incorrect proration, an appropriate determination or refund will be made.

History: Adopted February 8, 1961.

Amended and renumbered August 5, 1969, effective September 6, 1969.

Amended December 7, 1978, effective February 18, 1979. Amends subsection (d) (2), (e) (2), and (f) (2) to delete language on excess tax reimbursement.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.